IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 175 of 2003
IN
SPECIAL CIVIL APPLICATION No 1094 of 2002

For Approval and Signature:

HON'BLE MR.JUSTICE M.S.SHAH Sd/-
And
HON'BLE MR.JUSTICE D.A.MEHTA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

ANILSINGH FATEHBHADURSINGH

Versus

AMRUT SLIK MILLS

Appearance:

1. LETTERS PATENT APPEAL No. 175 of 2003
MRS SANGEETA N PAHWA for Appellant No.
MR SHUKLA FOR NANAVATI & NANAVATI for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE M.S.SHAH
and
HON'BLE MR.JUSTICE D.A.MEHTA

Date of decision: 07/07/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE M.S.SHAH)

This is an appeal against the judgment of the learned Single Judge dismissing the petition filed by the present appellant under Articles 226 and 227 of the Constitution challenging the order of the Labour Court, Surat in Misc. Application No. 13 of 2001 (Non-fatal Application No. 24 of 1999).

2 The present appellant filed Non-fatal Application No.24 of 1999 claiming compensation under the Workmen's Compensation Act, 1894 from the present respondent and others. In the said proceedings the Labour Court passed an ex-parte order dated 31/8/2000 awarding compensation of Rs.78,960/- from the present respondent. According to the appellant the respondent refused service of the said order. Hence, the appellant filed Recovery Application on 20/11/2000. The Labour Court issued recovery certificate dated 30/6/2001. Pursuant to the said recovery certificate, the Mamlatdar issued the summons on 7/11/2001.

The respondent filed Misc.Civil Application No. 13 of 2001 stating that the present respondent was not served with the notice or summons before the ex-parte order was passed against the present respondent and, therefore, the order passed by the Labour Court in Non-fatal Application No.24 of 1999 may be set aside or recalled and the present respondent may be permitted to file written statement and to adduce evidence to defend himself in the said Non-fatal Application No. 24 of 1999.

On the said Misc. Application, the Labour Court passed an order dated 7/11/2001 granting temporary injunction against execution of the award made in Non-fatal Application No.24 of 1999. As regards delay in filing the Misc. Application, the Labour Court observed that in view of the contents of paragraph 12 of the application, the prayer was accepted and thereafter the Labour Court intimated to the appellant that further proceedings will take place on 8/11/2001.

3 Aggrieved by the aforesaid order of the Labour Court, the appellant filed the petition under Articles 226 and 227 of the Constitution of India challenging the order in so far as the Labour Court accepted the present respondents request for condonation of delay and contended that no opportunity was given to the appellant before passing such order and, therefore, the order was violative of the principles of natural justice. The

learned Single Judge dismissed the petition on the ground that the restoration application filed by the present respondent is still pending and the Labour Court has only passed an interlocutory order with which this Court need not interfere because the appellant would be at liberty to raise all objections at the time of hearing of the restoration application.

4 Ms.Pahwa has submitted that at the time of hearing of the restoration application the appellant will be able to make submissions only on the question of restoration but the Labour Court will proceed on the basis that the delay of one year and two months in filing the restoration application is already condoned and, therefore, that issue will not be reopened at all.

5 On the other hand Mr.Shukla, learned Counsel for the respondent has supported the order of the learned Single Judge and submitted that the appellant will have the liberty to agitate his grievances in the restoration application. According to the present respondent there was no delay in filing restoration application because it was filed within the period of limitation from the date of knowledge about the order dated 31/8/2000.

6 Having heard the learned Counsel for the parties it appears that in the facts and circumstances of the case, the grounds urged by the present respondent in the restoration application i.e. Misc. Application No. 13 of 2001 for restoration of Non-fatal Application by recalling the order dated 30/1/2000 and the grounds for condoning the delay are intimately connected with the grounds given by the present respondent for condonation of delay in filing restoration application or even the ground for contending that there was no delay in filing the restoration application.

If the order passed by the Labour Court on 7/11/2001 at Annexure 'G' to the petition is not set aside in so far as the said record/s, the finding about acceptance of the explanation for delay or for holding that there was no delay, the appellant will never get an opportunity to persuade the Labour Court that there was delay in filing the restoration application and there was no sufficient cause for condoning such delay.

7 We accordingly set aside that part of the order only on the ground of violation of principles of natural justice and direct the Labour Court to hear Misc. Application No. 13 of 2001 after affording an opportunity of being heard to the parties both on the

question of delay, if any, in filing restoration application and on merits of the restoration application. Considering the fact that the proceedings are pending since long it would be in the fitness of things to direct, and we accordingly direct, that the Labour Court, Surat shall decide Misc. Application No.13 of 2001 in Non-fatal Application No.24 of 1999 as expeditiously as possible and in any case within three months from the date of receipt of the writ of this Court. Till then, the order dated 31/8/2000 passed in Non-fatal Application No.24 of 1999 shall remain stayed. The appeal is allowed to the aforesaid extent.

It is clarified that this Court has not gone into the controversy between the parties either in Non-fatal Application No.24 of 1999 or in Misc. Application No.13 of 2001.

Sd/-
(M.S.Shah, J)

Sd/-
(D.A.Mehta, J)

m.m.bhatt